UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1359
26 August 1999

Original: ENGLISH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-fifth session

SUMMARY RECORD OF THE 1359th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 19 August 1999, at 10 a.m.

Chairman: Mr. ABOUL-NASR

CONTENTS

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (continued)

Australia (continued)

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Second periodic report of Azerbaijan (continued)

Draft concluding observations concerning the twelfth to fifteenth periodic reports of Romania (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.99-43878 (E)

The meeting was called to order at 10.15 a.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Australia (continued)

1. The CHAIRMAN drew attention to a letter dated 18 August 1999 that he had received from the Permanent Mission of Australia, expressing the Government's concern over a press release of 16 August, which it believed misrepresented the respective positions of the Committee and the Government Australia in the matter currently under discussion, and which could be perceived as an official media statement by the Committee. As the Committee knew, he had already informed the Australian Permanent Mission that the press release in question did not convey the position of the Committee nor was it official record of the proceedings of the Committee. Those were reflected i the Committee's decision of 16 August on Australia and in the summary record of the relevant meetings.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTI UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Azerbaijan (continued) (CERD/C/350/Add.1; HRI/CORE/1/Add.41/Rev.2)

2. At the invitation of the Chairman, the members of the delegation of Azerbaijan resumed their places at the Committee table.

3. Mr. KHALAFOV (Azerbaijan), responding to questions about the Armenian minority, said that a national census taken at the beginning of 1999 would permit the Government to provide updated population statistics on all the ethnic groups in the country by the end of the year, when the results had be fully analysed. The figures provided by several non-governmental organizations (NGOs), including Human Rights Watch, and by the United States Department of State, were not up to date because the situation had changed a a result of major migratory flows and political, economic and social factors The main factor in the migration of Armenians had been Armenia's aggression and its occupation of Azerbaijani territory. The cited figure of 20,000 Armenians still in Azerbaijan was too low, because many of them were listed as members of mixed families. Since the ceasefire, their rights had been protected like those of all other citizens, without discrimination. Th Nagorny Karabakh region being now completely under Armenian control, the Government could provide no demographic or migration statistics for it. Numbers of people from another ethnic group, the Russians, had emigrated as well, to the Russian Federation, although in fact there were reciprocal flow depending on the availability of economic opportunities.

4. Regarding the structure of the Government, the Constitution (Constitutional Act on the State Independence of the Azerbaijani Republic) established the separation of powers. The functions of the President were defined in article 99 of the Constitution, and chapter VI defined the powers of the executive branch; implementing legislation had also been adopted. Th President had the right to take legislative initiatives, as did the members

the Supreme Court and the Parliament. Laws were adopted by Parliament and signed by the President. The Constitution itself guaranteed the most basic human rights, and in article 25 established the general principles prohibiting racial discrimination.

5. At least seven major laws had been passed since the drafting of the periodic report: a 1998 law on freedom of assembly; a 1998 law on the protection of persons participating in criminal proceedings; a major law on migration, drafted with the help of the International Organization for Migration (IOM) and reflecting the main international standards in the matter; a law on compensation to victims of illegal acts committed during pre-trial investigations by law enforcement and judicial officials; a law on citizens' petitions; a June 1999 law on court hearings of complaints about human rights violations; and a law on social protections for persons involved in forced migration. A general legislative revision was still under way, under the supervision of a special commission on legal reforms.

6. The right to employment of all citizens was protected under the Constitution and the various legal provisions discussed in the report (paras. 133 et seq.), as was the right of minorities to use their own languages. Several dozen new labour laws had been adopted since the drafting of the report, revising Azerbaijani legislation in accordance with international human rights standards. Under article 136 of the Criminal Code and article 49 of the Code on Administrative Offences, illegal dismissals, including dismissals on the ground of ethnic origin, were punishable by law. Individual instances of Russians who had been dismissed because of their inability to speak Azerbaijani might perhaps have occurred, but such discrimination was not tolerated de jure or in the practice of the courts. By contrast with other former Soviet Republics, Azerbaijan after independence had chosen a "soft" transition and the requirement of proficiency in the national language had never been on the agenda. In the Foreign Ministry, for instance, many members of national minorities held posts and the Russian speakers could use Russian in their work.

7. As to the geographical distribution of the many small nationalities and ethnic groups in the country, the Russians were mainly in urban centres and in a few rural regions. There were concentrations of Talysh in the south, and Lezgins in the north. The Kurds, formerly in the area of Lachin now under Armenian occupation, had been expelled from their homes and were living in tents and camps elsewhere in the country. All were Azerbaijani citizens. The expression "tribal origin" as used in the report sought to render the full meaning of the term "national or ethnic origin" within the meaning of article 1 of the Convention.

8. In application of the 1992 Presidential Decree on the protection of national minorities, a copy of which would be circulated to members, the Government had, as indicated in the report (para. 172 et seq.) encouraged and often supported the establishment of cultural centres for the various nationalities, and promoted their theatre and folk art, so that all would have the opportunity to preserve their originality. The Armenian Cultural Centre had obviously felt the impact of the painful war conditions that had been a tragedy for both sides. The Talysh, Lezgins, Russians and other ethnic groups could publish their own newspapers and broadcast radio and television

programmes in their own languages. There was also an official gazette in Russian and nationwide access to Russian television. By law, the Government had to fund, from its limited resources, courses in the ethnic languages in schools and universities.

9. There were no official statistics on the representation of minorities in the Government, but they would be provided in the next periodic report. Russians, Ukrainians, Lezgins and Talysh as well as Azerbaijanis were, however, members of Parliament. There were no racial or ethnic restrictions on appointment to public posts and, in practice, members of minorities did serve in senior positions also in the army, the police and the judiciary.

10. It was possible that some NGOs had been refused registration, perhaps for procedural or bureaucratic reasons, but that did not reflect the Government's policy. Dozens of NGOs were registered, as were opposition parties and publications. Of the approximately 600 newspapers in Azerbaijan, about one half represented opposition views. The report had given details on the free and open political opposition allowed in the country.

11. One question raised about the availability of a sum of $400,000 for the promotion of human rights presumably referred to the programme of technical assistance to be provided through the Office of the High Commissioner for Human Rights. That programme would be for the benefit of all citizens, including minorities. In response to a further question, he pointed out that the reference, in the report, to political parties and trade unions was not intended to be exhaustive; other organizations and associations were likewise recognized.

12. Mr. MAMMEDOV (Azerbaijan), referring to questions concerning the independence of the courts and the judiciary, said that, since gaining independence, Azerbaijan had proceeded to separate the legislative, executive and judiciary functions. By 1997, constitutional provisions and legislation had been in place to safeguard the independence of the courts and the judiciary, and the posts of judges had been depoliticized, as had senior appointments in the armed forces, law enforcement services and other public bodies. Any abuse of court proceedings or acts in contempt of court were prohibited, inter alia, under article 175 of the Criminal Code; similar provisions ensured the safety and inviolability of the judiciary. Appointments to the latter were now carried out under a collegial system involving the Chief Justice, the President of the Supreme Court and members of the Bar, whose recommendations were submitted to the President of the Republic. The five-year period of tenure mentioned by Mr. Banton and Mr. de Gouttes related only to lower ranks of the judiciary; senior members held their appointments for 10 years. The law provided that judges could not be transferred to other posts without their agreement; and removal of a judge from office was governed by a special procedure. Further legislation had been adopted in December 1998 to define and safeguard the status of judges; more work was being carried out on matters such as salary scales.

13. Pursuant to article 127, section 10, of the Constitution, court proceedings were normally conducted in the official language, Azerbaijani. As mentioned in the periodic report (CERD/C/350/Add.1), however, the language spoken by the majority population in a locality was the language to be used in

that area's courts. On the concept of majority population, national minorities tended to live in compact areas; as a result, there was normally no difficulty about using the local language, but facilities were available to cover exceptions, and interpreting services were available free of charge to defendants and funded from the State budget. It should be noted that failure to provide court services in response to language difficulties could be deemed grounds for overturning a judgement. The aforementioned compactness of national minorities, and the consequent wide representation of a minority in an area's public offices and services, meant that many of the judicial posts in the area were held by members of that minority.

14. With regard to legislation to prohibit acts of racism and racial discrimination, he quoted article 25, section 3, of the Constitution, which guaranteed equal rights and freedoms to all persons regardless of such factors as language, race, sex, religion and political beliefs. All restrictions applied on such grounds were prohibited. Article 67 of the Criminal Code provided for sanctions against violations of the right to national and racial equality. Under section 1, action to incite racial hatred or disdain, directly or indirectly, was punishable by imprisonment for a period of up to 3 years; the maximum period covered by section 2, relating to acts aggravated by threats or violence, was 5 years; and that covered by section 3, relating to acts committed by groups or acts leading to serious injury or death, was 10 years.

15. The new law on citizenship, adopted after Azerbaijan's accession to the Convention, was innovative in that it was henceforth impossible to deprive any person of citizenship or to commit any person to exile. Another new feature was that children born to stateless persons in the national territory acquired Azerbaijani citizenship. Stateless persons living in the national territory enjoyed all civil rights with some specific exceptions such as the right to seek election or serve on the judiciary.

16. One question by Mr. Banton related to a report, by a human rights federation, of an interview given to a publication by the Deputy Public Prosecutor, in which the latter had allegedly described an international NGO as "meddlesome". He regretted that a human rights body could publish such an article without checking the source material. He himself had made inquiries in the appropriate quarters and had received an official denial of the allegation; moreover, he had read the publication, which had been faxed to him at his request, and found that it contained no account of any such interview. In any case, Azerbaijani authorities had close links at all times with NGOs, and there was no recorded instance of ignoring or suppressing any of their questions and comments, even when critical. In a free society there was surely no point in trying to shirk cooperation with such bodies. The material to which he had referred was available to the Committee.

17. The Special Directorate in the Ministry for Internal Affairs consisted of personnel appointed to look into alleged infringements, by police officials, of laws and regulations that involved citizens' rights and freedoms. Any such infringements involving criminal liability were referred to the Procuracy General. The Directorate's activities related to the rights of the public at large and did not focus solely on questions of race or nationality. Records showed that some 6,000 complaints by citizens were

received each year, alleging violation of rights; all were investigated. Any instances that revealed signs of national, ethnic or racial discrimination would of course be forcefully dealt with, but none had been recorded to date. Under recently enacted legislation, procedures would be established to facilitate court action by citizens in that respect.

18. The Government was aware that new legislative and other measures would not be fully effective unless the public at large knew about them. Steps were being taken, therefore, to ensure that all new legislation was widely publicized, not only in the Official Gazette, the Presidential Gazette and parliamentary bulletins but in law reports and other publications, the texts to be normally accompanied by authoritative commentaries. Mass-circulation brochures, all available in the Azerbaijani language, were already provided on current legislation as well as on international instruments.

19. Mr. RAGIMOV (Azerbaijan) said that the Constitution, especially article 58, guaranteed to all the right of free association, which included the right to create or join associations and organizations, and also guaranteed their freedom of action. Those rights were further protected in a number of legislative acts such as the Law on political parties, the Law on trade unions and the Law on public organizations. Article 1 of the latter law defined public organizations, and article 4 specified the types of organization prohibited; they included those with such objectives as altering the law or Constitution, violating territorial integrity and inciting or using force or hostility, as well as secret societies.

20. Azerbaijani specialists in labour law, working in consultation with the International Labour Office and drawing on the Conventions and Recommendations of the International Labour Organization (ILO), had drawn up a new Labour Code, which had entered into force on 1 July 1999. Azerbaijan had ratified some 52 ILO Conventions and Recommendations, including all those dealing with human rights. The new Code established the rights and guarantees which applied to trade unions at all levels, from labour relations in small enterprises to those involving the Government.

21. The table in paragraph 169 of the report contained an error. The third line should read "Number of institutions of specialized secondary education", not "of secondary education". A major overhaul of the education system in Azerbaijan was currently under way. A presidential commission on education reform had been established and a State education reform programme had recently been initiated with the participation of international organizations, including the World Bank and the International Monetary Fund (IMF).

22. Mr. KHALAFOV (Azerbaijan) said that the NGOs which had taken part in the preparation of the report included the Human Rights Defence Committee, the European Human Rights Centre, the International Relations and International Law Society, the Russian Community of Azerbaijan, the "Budug" Cultural Centre and the "Azerbaijan-Georgia" Society.

23. There were no restrictions on the right of individuals to change their names. As to nationality, the passports, identity cards and other official government documents did not indicate nationality in the sense of membership of an ethnic group. The identity cards did, however, indicate the permanent

place of residence, which was selected at will by the holder. A newly adopted Law "On leaving and entering the country and on passports" had in effect done away with the local registry offices which had been vestiges of the Soviet era.

24. Amnesty International had approached the Government concerning reports that people of Armenian nationality were held as hostages in Azerbaijani jails with a view to prisoner exchanges. It had been found that some citizens of Armenia were indeed being held as hostages, and the Government had secured their release. It had directly answered the concerns expressed by that NGO. The delegation was surprised that Amnesty International had not furnished more information in that respect, a fact which pointed to the need for closer cooperation between such NGOs and Governments.

25. Assistance could be provided to religious groups or organizations other than those mentioned in paragraph 121 of the report. The Office of the President worked with a national policy advisory board, which coordinated relations with national minorities and religious communities. Religious tolerance formed part of Azerbaijan's cultural wealth. Throughout the country's history, various congregations and faiths and places of worship had coexisted, and they continued to exist in harmony.

26. The phrase "unless otherwise specified by law or an international treaty of which the Azerbaijani Republic is a member" in paragraph 101 of the report had prompted a number of questions. A law governing the rights of foreigners and stateless people defined those terms, along with the term "immigrant". Their rights were the same as those of citizens, with the exception of the rights to vote and be elected, to serve in the armed forces and to hold certain official posts related to citizenship. There were no limitations on their rights in the social and economic spheres. The chapter of the Constitution which set out human rights applied to all persons in the country, whether citizens, foreigners or stateless persons.

27. The United Nations Security Council, the Organization for Security and Cooperation in Europe (OSCE), the Organization of the Islamic Conference (OIC) and other international bodies had adopted resolutions on the conflict in Nagorny Karabakh, all of which were based on respect for the territorial integrity of States. The 1996 Lisbon Summit had set out three principles for a settlement: the territorial integrity of Azerbaijan and Armenia; the highest possible degree of self-rule or self-government for Nagorny Karabakh within Azerbaijan; and security guarantees for the entire population of Nagorny Karabakh.

28. Nakhichevan, an enclave separated from the rest of Azerbaijan by Armenian territory, was an integral part of Azerbaijan inhabited by Azerbaijanis, and had the status of an autonomous republic within the country.

29. The domestic legislation of Azerbaijan took up the wording of the Convention in matters relating to the elimination of racial discrimination. A number of measures were being taken to promote human rights, including the publication, with the help of international organizations, of the Azerbaijani texts of human rights instruments. Subjects such as democracy, human rights and fundamental freedoms had been introduced into secondary school and

vocational school curricula and were taught in police and military academies, and joint seminars were held with various international organizations, including the Office for Democratic Institutions and Human Rights of the OSCE and the Council of Europe.

30. As stated in paragraph 22 of the report, in the event of a contradiction between domestic law and international treaties, the international standards prevailed, except in the case of acts adopted by referendum or constitutional provisions, as the Constitution had itself been adopted by referendum. The Constitution had been drawn up with close attention paid to the standards set in international instruments and with full respect for the principles of democracy.

31. The establishment of an Ombudsman's office was highly topical, as Azerbaijan was working closely with the Council of Europe and other international human rights bodies to set up such an institution. A seminar on the establishment and workings of an Ombudsman's office was to be held in Azerbaijan in 1999 with the assistance of the Office of the High Commissioner for Human Rights, and the subject was being given consideration by the President of the Republic.

32. Thanking the members of the Committee for their good will and warm welcome, he expressed confidence that the interesting exchange of views would help Azerbaijan develop its democratic and human rights institutions, which represented a vital task for any young State which wished to ensure the well-being of its people. The Government would study closely the Committee's concluding observations.

33. The CHAIRMAN noted the high level of the delegation and commended the periodic report. Speaking as a member of the Committee, he said the country faced serious constraints, including the occupation of part of its territory. In his view, the Committee's concluding observations should express the hope that a rapid and peaceful solution could be found to the armed conflict, on the basis of full implementation of the United Nations Security Council resolutions, particularly having due regard for the territorial integrity of States. In practical terms, it would be difficult indeed to expect the Azerbaijani people to look favourably upon measures to ensure the rights of the Armenian minority while Armenia was still occupying Azerbaijani territory.

34. Mr. GARVALOV expressed his satisfaction that Mr. Khalafov, in responding to his question about the status of Nagorny Karabakh, had used the Russian word "samoupravlenie", meaning "self-government".

35. Mr. RECHETOV expressed satisfaction with the quality of the report, the high level of the delegation and the latter's response to most of the questions asked. The delegation's attentive approach would no doubt foster a fruitful dialogue between the Committee and the State party.

36. Like the United Nations Security Council, the Committee had unswervingly defended the maintenance of the territorial integrity of all States, including Azerbaijan. Stability had proved to be the best precondition for the realization of all human rights, including those provided for under the Convention.

37. Mr. BANTON, speaking on behalf of the Country Rapporteur, said that one of the encouraging aspects to emerge from the dialogue that had taken place was the State party's stated determination to implement the Convention and prevent racial discrimination. Another was the new spirit that seemed to prevail in some of the new or recently reborn States, as seen in the level of voter participation in Azerbaijan, a sign of the extent to which people there valued their rights and freedoms, unlike the apathy observed in some Western countries. The information that publications containing international human rights standards quickly sold out reflected keen public interest in human rights issues. The State party attached much importance to ensuring the separation of powers and the independence of the judiciary.

38. For the benefit of the delegation he described the Committee's reporting cycle, which consisted of a comprehensive report submitted every four years, with a two-yearly update in the intervening period. The Committee therefore looked forward to receiving an updating report, which should contain relevant data from the new census.

39. Appreciating the need, in a newly independent country such as Azerbaijan, to begin by setting standards and building institutions, the Committee would be pleased if the next periodic report contained more information on the actual implementation of measures against racial discrimination.

40. Article 2, paragraph 1, of the Convention called for States to eliminate racial discrimination "by all appropriate means". Some reporting States simply stated to the Committee that they had not received any formal complaints, to which the Committee responded that the reason might be not an absence of discrimination, but rather a lack of knowledge, means, courage or determination on the part of its victims. States parties to the Convention had the obligation to recognize and identify such obstacles.

41. Finally, he drew the attention of the delegation to the possibility of recognizing the Committee's competence to receive individual petitions pursuant to article 14, and to the need to ratify the amendment to article 8, paragraph 6, of the Convention.

42. Mr. KHALAFOV (Azerbaijan), expressing his delegation's thanks for the constructive dialogue that had been established, said he wished to offer each member of the Committee a portrait of the old town of Baku as a souvenir of the delegation's visit.

43. The CHAIRMAN thanked the delegation for its participation and for the gifts.

44. The delegation of Azerbaijan withdrew.

Draft concluding observations concerning the twelfth to fifteenth periodic reports of Romania (continued) (CERD/C/55/Misc.27/Rev.2)

45. The CHAIRMAN invited the Committee to resume its consideration of the draft concluding observations concerning the twelfth to fifteenth periodic reports of Romania.

Paragraph 11 (continued)

46. Mr. YUTZIS (Country Rapporteur) said that the last sentence of the paragraph was still in abeyance. However, he could find no better wording than the existing one.

47. After a discussion in which Mr. GARVALOV, the CHAIRMAN, Mr. SHAHI and Mr. van BOVEN took part, Mr. DIACONU said that the Committee's concern should not be expressed about the absence of special measures in favour of the Roma population of Romania, since in fact such measures, in the form of special schools, quotas for university entrance, seats in parliament, etc., had been taken, but rather over the State party's submission - no doubt on account of its misunderstanding of the term "special measures" - that its difficult economic situation precluded such measures.

48. The CHAIRMAN suggested that a small working group should discuss the wording of the last sentence and report back to the Committee at a later meeting.

49. It was so decided.

Paragraph 14

50. Mr. DIACONU suggested that the phrase "racist practices in the mass media" should be replaced by "racist statements in the mass media".

51. Mr. BANTON said that some media used images as well as spoken or written statements. He suggested the wording "measures to prevent racism in the mass media".

52. The CHAIRMAN and Mr. YUTZIS (Country Rapporteur) said they preferred the term "practices".

53. Mr. RECHETOV suggested the wording: "measures to prevent and punish incitement to racial discrimination in the mass media".

54. After an informal show of hands, the CHAIRMAN said that most members seemed to be in favour of the original version of the paragraph.

55. Paragraph 14 was adopted.

Paragraph 15

56. The CHAIRMAN asked why the paragraph mentioned only economic, social and cultural rights, rather than human rights as a whole.

57. Mr. YUTZIS (Country Rapporteur) said that additional education and vocational training for the Roma population would help the Roma to assert their economic, social and cultural rights. It was those rights, rather than civil and political rights, which were the main problem for the Roma population.

58. Mr. DIACONU confirmed that the civil and political rights of the Roma were fairly well protected: Roma had the vote and were elected to public office, for example.

59. Mr. van BOVEN observed that the paragraph referred to affirmative action, which usually implied a need for additional resources. In that context, the issue was one of economic, social and cultural rights.

60. Paragraph 15 was adopted.

Paragraph 16

61. Paragraph 16 was adopted.

Paragraph 17

62. Mr. SHERIFIS suggested that the second sentence should be amended to read: "... the Committee draws the State party's attention to the content of its General Recommendation XIII".

63. Paragraph 17, as amended, was adopted.

Paragraph 18

64. Mr. SHERIFIS suggested the wording: "[the effective dissemination ...] of the provisions of the Convention, as well as of its periodic reports and of the Committee's concluding observations".

65. Mr. DIACONU suggested that "reports" should be replaced by "report", in order to make it clear that only the most recent periodic report and concluding observations were meant.

66. Paragraph 18, as amended, was adopted.

Paragraph 19

67. Paragraph 19 was adopted.

The meeting rose at 12.50 p.m.